(REGULATIONS No. 14, REVISED.)

UNITED STATES INTERNAL REVENUE.

INSTRUCTIONS

CONCERNING THE

ABATEMENT AND THE REFUNDING

OF

TAXES AND PENALTIES

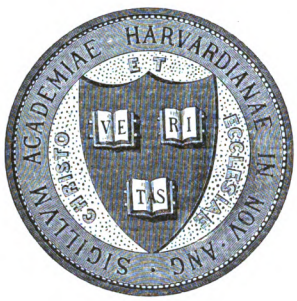
WHICH ARE UNCOLLECTIBLE, ABATABLE, OR REFUNDABLE UNDER THE PROVISIONS OF SECTIONS 3220 AND 3221, REVISED STATUTES, SECTION 6, ACT OF MARCH 1, 1879, OR OTHER ACTS,

AND

THE REDEMPTION OF OR ALLOWANCE FOR INTERNAL-REVENUE STAMPS

UNDER THE PROVISIONS OF THE ACT OF MAY 12, 1900, AS AMENDED BY THE ACT OF JUNE 30, 1902.

WASHINGTON
1911



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TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, October 15, 1911.

The following Regulations, prescribed by the Secretary of the Treasury, are herewith published as Regulations No. 14, Revised, Instructions to Internal-Revenue Officers.

R. E. CABELL,
Commissioner.

REGULATIONS.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., October 15, 1911.

Section 3218 of the Revised Statutes is as follows:

Every collector shall be charged with the whole amount of taxes, whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited with him, and with all moneys collected for penalties, forfeitures, fees, or costs; and he shall be credited with all payments into the Treasury made as provided by law, with all stamps returned by him uncanceled to the Treasury, and with the amount of taxes contained in the lists transmitted, in the manner heretofore provided, to other collectors, and by them receipted as aforesaid; also with the amount of the taxes of such persons as may have absconded, or become insolvent, prior to the day when the tax ought, according to the provisions of law, to have been collected, and with all uncollected taxes transferred by him, or by his deputy acting as collector, to his successor in office: *Provided*, That it shall be proved to the satisfaction of the Commissioner of Internal Revenue, who shall certify the facts to the (First) Comptroller of the Treasury, that due diligence was used by the collector. And each collector shall also be credited with the amount of all property purchased by him for the use of the United States, provided he faithfully account for and pay over the proceeds thereof upon a resale of the same, as required by law.

Section 3220 is as follows:

The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty: *Provided*, That where a second assessment is made in

case of a list, statement, or return which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, unless it is proved that said list, statement, or return was not false or fraudulent, and did not contain any understatement or undervaluation.

CREDIT TO COLLECTORS FOR TAXES CHARGED AGAINST THEM WHICH ARE UNCOLLECTIBLE.

Collectors are entitled to credit for taxes assessed against parties who may have absconded, or become insolvent prior to the day when the tax ought according to the provisions of the law to have been collected, provided that it shall be proved to the satisfaction of the Commissioner of Internal Revenue, who shall certify the fact to the Auditor for the Treasury Department, that due diligence was used by the collector.

It should be borne in mind that, though credits allowed on account of insolvency or absconding release the collector from the obligation created by his receipt for the amount credited, the obligation to pay still remains upon the parties assessed. Collectors should, therefore, keep a record (No. 23) of all taxes thus credited, and of the persons from whom they are due, and should enforce payment whenever it is in their power to do so.

If a tax reported as uncollectible on account of the insolvency or absconding of the party owing it, is paid after credit has been given for it, it should be returned upon Form 58.

PREPARATION OF CLAIMS FOR CREDIT FOR TAXES AND ASSESSED PENALTIES ALLEGED TO BE UNCOLLECTIBLE.

Form 53.

When a tax is found to be uncollectible the collector or deputy collector who made the demand for payment and is conversant with the facts should prepare a claim on Form 53, revised February 14, 1901, showing the name and address of the party assessed, the article or occupation for and on account of which the assessment was made, the list, page, and line on which assessed, the amount claimed, the date of first demand, and the date when the tax was found to be uncollectible, and the cause of inability to collect. The amount or amounts claimed should be entered on the Form 53 under the respective column in which it or they are charged to the collector on Form 23. One or more claims may be entered upon one Form 53, and in cases where a special tax and a penalty are both claimed to be uncollectible, but one entry of the name, address, etc., should be made, but the amounts should be entered in their respective columns.

Claims for abatement of taxes as uncollectible on account of insolvency of the principals on bonds given to secure the taxes should not be presented until after the cases have been reported to the Commissioner of Internal Revenue, as directed in Circular No. 331, dated January 21, 1889.

The collector should call on the sureties for payment when the principal is insolvent, and if they prefer to contest, he will then report to the Commissioner of Internal Revenue for authority to bring suit.

Collectors should make a careful examination as to the solvency of sureties before reporting to the Commissioner for permission to bring suit or otherwise.

In case the sureties are reported insolvent, the collector will state, as nearly as can be ascertained, the length of time such sureties have been insolvent; also what efforts were made by him to secure additional bond security. In this connection attention is called to instructions on page 71 of Regulations No. 7, of April 15, 1901, respecting additional warehousing bonds in case of death, removal, or insolvency of sureties; and hereafter taxes will be abated as uncollectible, in such cases only where it is found that the collector has exercised due diligence in this matter.

If authority is given the collector to report the case to the United States attorney for suit, the bonds should immediately be placed in the hands of the United States attorney and his receipt obtained in duplicate, one of which should be filed with the claim on Form 53. If authority is not given to report the case to the United States attorney, the claim may be made on Form 53 for the abatement of the tax as uncollectible and a copy of the letter refusing to grant authority to report the case to the United States attorney should be filed with the claim.

Collectors are required to make demand within the time prescribed by law, and either to collect the taxes or prove them to be uncollectible, within six weeks after the receipt of the list, unless special reasons are furnished, such as lack of mail facilities, great extent of territory, etc., showing why they could not be collected within that time.

Six months are allowed from the receipt of a list in which to close it up, either by collection or by presenting claims for abatement; but when an abatement of taxes alleged to be uncollectible is asked, it must be shown in the vouchers, by dates, or otherwise, that they could not have been collected at the time they first became due and payable according to law, nor at any time since. Where dates can not be given, it should appear in each case that they were uncollectible before distraint was or could have been made.

Upon this form there should be a sworn certificate of the deputy collector of the division, as follows:

I, ——— ———, deputy collector of internal revenue for division No. ——, in collection district No. ——, in the State of ——, hereby certify that the within taxes or duties charged to and assessed against the several persons named in the lists within specified for 19—, amounting in the aggregate to ——— $\frac{}{100}$ dollars, have not been collected; and that I demanded payment of said taxes and duties of the within-mentioned persons on the several dates affixed to their names; and that I have been unable to collect said taxes and duties, or any portion thereof, for the reasons set forth in my schedule herein inclosed. And I further certify that neither of the parties against whom the taxes herein claimed for abatement were assessed had any property liable to distraint for the said taxes at the time when warrants of distraint could first lawfully be issued therefor—i. e., ten days after first demand for the same at the dates specified in the schedule—nor since; that I made diligent efforts to collect the said taxes and duties, and that the failure to collect the same did not arise out of or through any omission or neglect of duty on my part.

———— ————,
Deputy Collector.

Sworn and subscribed to, this —— day of ——, 19—, before me.

———— ————.

Circular 118 calls the attention of collectors of internal revenue to the act of March 3, 1873 (17 Stat., 580; see sec. 3164, Rev. Stat., on p. 74 of the compilation of 1900), which provides "That it shall be the duty of the several collectors of customs and of internal revenue to report within ten days to the district attorney of the district in which any fine, penalty, or forfeiture may be incurred for the violation of any law of the United States relating to the revenue, a statement of all the facts and circumstances of the case within their knowledge, together with the names of the witnesses, and which may come to their knowledge from time to time, stating the provisions of the law believed to be violated, and on which a reliance may be had for condemnation or conviction." * * *

The carrying on of any business upon which a special tax is imposed by law, without payment of the tax, is a violation of law which renders the delinquent liable to fines and penalties.

Collectors are therefore instructed, in every case where a special tax is claimed for abatement as uncollectible, to enter in the column for "Remarks," on Form 53, the date of report of the case to the district attorney for prosecution.

The following certificate should be made upon each Form 53 by the collector, and the number of any claim to which he may object should be entered under the exception in his certificate, and there should be a written statement of the reasons for his objections annexed to the Form 53 itself:

Collector's certificate.

UNITED STATES INTERNAL REVENUE,
Collector's Office, ———, *District of* ———.
———, ———, *19—*.

I hereby certify that I have carefully investigated the facts set forth in the within claims, and am satisfied that, except ——— ———, they are in all respects just and true. And I further certify, from personal examination, that all the names and taxes enumerated within are found on the pages and lines as indicated in the respective lists now on file in my office; and that each of the said several taxes is included in my aggregate receipt for the list to which it belongs, as reported to the Office of Internal Revenue; and I further certify that no credit has heretofore been allowed in any form on account of any of the taxes within claimed for credit, and that none of them have been collected.

——— ———, *Collector.*

When the claims have been thus prepared they should be carefully sealed up and mailed to the Commissioner of Internal Revenue. Letters of transmittal should not be sent with claims unless they contain necessary explanations.

TAXES THAT ARE OR HAVE BEEN IN LITIGATION.

When a suit has been instituted upon a bond for the recovery of a tax due from a taxpayer who has no distrainable property, the collector may present a claim for abatement of the tax on Form 53.

The Form 53 should show when the tax first became due; whether the taxpayer had any property liable to distraint at that time or thereafter, and whether the collector used due diligence at all times to collect the tax.

The claim should be supported by a certificate of the United States attorney stating the date of the commencement of the suit, and when the bond was first placed in his hands.

It is the duty of the collector to use the same diligence to collect a tax after it has been abated as uncollectible, or as in suit, as before abatement. Such an abatement does not impair the claim of the Government against the taxpayer or against the sureties upon his bond.

Amounts collected by distraint or otherwise, subsequent to the institution of the suit, should be at once reported to the United States attorney for his guidance in his further prosecution of the case in court.

Credit given the collector for taxes abated as uncollectible will not affect a suit pending for their recovery, nor will it relieve the collector from the duty of distraining any property of the taxpayer that may be found at any time before judgment.

When a suit for the recovery of a tax is decided against the United States on the merits of the case, and the decision is accepted as final, the collector should immediately present to the Commissioner of Internal Revenue a claim for the abatement of the tax on Form 47. The affidavit on Form 47 may be made by the collector. It should be accompanied by a certificate of the clerk of the court in which the case was tried, showing when the case was tried, the amount of the bond, if any, the amount sued for, and that judgment was rendered for the defendant; also showing that the judgment was upon the merits of the case, and was not based on a mere technicality in the pleadings, or on other grounds that would not prevent another suit. In addition to this, the United States district attorney should attach his certificate to the same effect.

Where the judgment in any such case is given in favor of the United States for a portion only of the amount sued for, the balance should be claimed for abatement as erroneous, and the claim should be supported by the certificate of the clerk of the court and the United States attorney, as prescribed in the preceding paragraph.

When a suit for the recovery of a tax is decided in favor of the United States, and execution issued and returned *nulla bona*, as respects the whole or a part of the judgment, the collector should satisfy himself, by careful inquiry, whether any personal property can be found to satisfy the judgment in whole or in part, and whether there is any real estate which can be subjected, by distraint or by suit in equity, under section 3207, Revised Statutes of the United States, to sale in satisfaction of the judgment; and if he should be fully satisfied that there is no such real or personal property, he should thereupon present to the Commissioner of Internal Revenue a claim, on Form 53, for the abatement of the amount which has not been and can not be collected, if it has not already been abated, making a statement thereon of his action, accompanied by a certificate of the clerk of the court as to the facts in the case.

When a suit for taxes not abated as uncollectible is dismissed upon a technical defect in the proceedings, or when an adverse verdict is rendered on some technical ground not reaching the merits of the case, and the right to a new trial or to an appeal has lapsed, and the tax can not be collected by distraint or by suit in equity to subject real estate to sale, the claim for abatement of the taxes should be made on Form 53.

Collectors are authorized to pay the clerk of the court his legal fees for the certificates required by the regulations of this Department furnished by him relative to litigated taxes, and will be credited in their expense accounts for the amounts so paid on filing therewith vouchers covering the expenses thus incurred. (See Regs. No. 2, p. 84.)

Where land is sold to satisfy assessments, the amount realized, after deducting expenses of sale, should be credited to the lists, and the remainder, if uncollectible, claimed on Form 53. If land is bid in by the collector for the United States, the amount for which the same is purchased, after deducting expenses of sale, should be credited to the assessments under the limitations prescribed in Regulations No. 2, revised, and the remainder, if uncollectible, claimed on Form 53.

PREPARATION OF CLAIMS FOR THE ABATEMENT OF TAXES AND PENALTIES ALLEGED TO HAVE BEEN ERRONEOUSLY OR ILLEGALLY ASSESSED, OR TO BE ABATABLE UNDER REMEDIAL ACTS.

FORM 47.

Claims for the abatement of taxes or penalties erroneously or illegally assessed or which are abatable under remedial acts, etc., must be made out upon Form 47, and must be sustained by the affidavits of the parties against whom the taxes were assessed, or of other parties cognizant of the facts, and must be accompanied by affidavits of the deputy collectors of the divisions in which the claims arise. These latter affidavits should be in the following form, as printed on the second page of Form 47:

Deputy collector's affidavit.

I, ——— ———, deputy collector, ——— division, ——— district ———, being duly sworn according to law, depose and say, that I have *personally* investigated the statements made in the within affidavit, ———; and from the best information I can obtain, after careful inquiry, I believe such statements to be in all respects just and true.

———

——— ———.

Sworn to and subscribed before me, this —— day of ———, A. D. 19—.

——— ———.

But if the deputy collector has reason to doubt the correctness of the statements made by a claimant, he should modify his affidavit accordingly, a space being left for that purpose at the close of the affidavit. If he has not investigated all the facts, he should state in the blank space left in the body of the affidavit for that purpose what facts he has not investigated.

If there are any objections to a claim, the collector should be careful to state them fully in a certificate to be attached to and made part of the claim. In some cases, where the collector has certified to the correctness of claims, the deputy collector makes exceptions to the

facts as stated by the claimants. Unless the collector makes a special explanation in every such case, the claim will be returned for such explanation.

The claim should be still further supported by a certificate of the collector showing the list, page, and line of all assessments therein referred to, not only of the assessment of the tax for the abatement of which the claim is filed, but also of each and every other assessment mentioned in the claim. Even where only a portion of a tax is claimed as erroneous, the collector should be careful to certify the *full amount* assessed.

That certificate should be as follows:

Collector's certificate.

I hereby certify that, upon careful examination, I find that the within-named assessments appear upon the lists in my office as follows:

Name.	Article or occupation.	Period covered by assessment.	List.	Page.	Line.	Amount.

_____, _____,

Collector, —— *Dist. of* ——

———, ———, 19—.

If the claimant is a distiller, the number of his distillery should be given in this certificate.

When a tax has been assessed and turned over to the collector, the presumption is that the assessment is correct. The burden of proof in rebutting that presumption, and showing that it was improperly or illegally assessed, or that relief should be given under a remedial statute, rests upon the applicant for abatement. The affidavits must, therefore, contain full and explicit statements of all the material facts relating to the claims in support of which they are offered, and which are essential to their proper consideration. Nothing should be left to mere inference, but all the facts relied upon should appear on the papers themselves. It is only the correctness of the statement of facts to which the deputy collector certifies, not the legality of the claim. The *legality* of the claim is to be determined by the Commissioner of Internal Revenue upon the facts presented and proved by the affidavits.

In the case of claims for the abatement of taxes assessed upon a deficiency in production of distilled spirits, the affidavits upon Form 47 should be accompanied by a statement from the collector, showing

the month in which the deficiency occurred, and the form, page, line, and amount of each and every assessment made against the distiller for or during that month. It should clearly appear which of the amounts have been paid, which are claimed to be erroneous, etc. To avoid confusion, there should be a separate statement on Form 47 for the amount claimed as erroneous in each month.

When a case is compromised, in which an assessment is involved, the amount paid as tax should be credited to the list. The amount, if any, remaining outstanding, should be claimed for abatement on Form 47, if the terms of the compromise so require.

Claims for abatement of taxes assessed as stamp tax on spirits should be made on Form 47.

Where abatement is claimed under section 3221, Revised Statutes, on account of spirits alleged to have been destroyed by accidental fire or other casualty, the claim in such cases will be prepared in accordance with instructions on page 21 of these regulations. Upon the allowance of such claims by the Secretary of the Treasury, notice will be sent from this office to the collector, who will take credit on his bonded account, and if the tax on the spirits has been assessed, a claim for the abatement of the tax so assessed and remitted by the Secretary of the Treasury should be made by the collector on Form 47, in order to obtain credit on his Form 23. If the tax is not assessed, a claim is not necessary.

If the spirits were actually produced and gauged and it is alleged that the tax assessed was excessive, a copy of the Form 59 should accompany the claim.

In cases where assessments are made for spirits supposed to have been produced, but not accounted for, the name of the officer who reported the amount for assessment, and the date of his report, should be given by the collector.

In cases where assessments are made on account of spirits bonded for export, the claim should be supported by clearance certificates and by landing certificates, or, in lieu of the latter, an explanation why they can not be furnished, and an affidavit of the consignee that the spirits, giving the serial numbers of the packages and their marked contents, were received, should be furnished.

In cases where an assessment has been made on account of brandy produced and not accounted for, the name of the revenue officer who reported the case for assessment, and the date of his report, should be given by the collector, and the collector should also state whether there is any evidence that the distiller had sold or removed spirits without the payment of the tax. All alleged losses of cider by leakage and alleged destruction of pomace should be supported by affidavits of at least two disinterested witnesses, and the date of the leakage or destruction should be given.

In cases where penalties assessed for failure to make return for special tax are claimed as erroneous, the collector should give the date of commencing business—the date when the return was received by him or his deputy. He should also state when and how the claimant first disclosed his liability.

Claims for abatement of taxes assessed on legacies should be accompanied by a copy of the legacy return and an amended return on Form 419, and in complicated cases by a certified copy of the will.

Claims for abatement of special taxes erroneously assessed in column 10½ of Form 23, and any other taxes paid by stamps and assessed in column 10½ of the same form, should be made on Form 47. These claims should be made by the party in interest and should be supported by the affidavit of the deputy collector and by the certificate of the collector. The collector should also certify as to any additional assessments made against the same party, and if special-tax stamps have been issued, he should give the number of the stamps, the date of issue, the time for which issued, the name of the party to whom issued, and the amount paid therefor.

In cases where assessments have been made in column 10 of any list as stamp tax on spirits after the stamps had been issued for the tax due on said spirits, the claim should be made on Form 47, and the collector should certify to the date of issue of the stamps and the amount paid therefor. If the assessment was legally made before the purchase of the stamps, the claim should be made on Form 488.

In cases of assessment in column 10 of any list of stamp taxes under Schedule A or B, Act June 13, 1898, if stamps are issued after assessment, the claim should be made on Form 488. If, however, the assessment was made after the issue of the stamps, the claim should be made on Form 47. In these cases the collector should certify as to the date of the issue of the stamps.

In the preparation of claims upon Form 47, for the abatement of special taxes, it is not sufficient to state that the claimant has done no business requiring payment of the tax; has done no business as wholesale liquor dealer; has done no business as a retail dealer in liquors; has done no business as a dealer in tobacco, etc.; but the denial should be made in the words of the law. The affidavit should traverse the definition as found in the statute, such exceptions being made as the facts require.

For instance, in case of an assessment as retail dealer in liquors, the applicant should swear that form ——— to ———, the period covered by the assessment, he did not sell, or offer for sale, foreign or domestic distilled spirits, wines, or malt liquors in less quantities than 5 wine gallons at the same time except ——— ———, or in the case of brokers, that from ——— to ———, —he— ha—— not negotiated

purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities, for ——— or others, except ———.

These examples are designed simply as illustrations of the manner in which the statutory definitions should be traversed. It is believed that a strict observance of this mode of making claims will not only remove the necessity of returning them so frequently for explanations and further evidence, but will actually diminish and simplify the labor of original preparation.

While, however, it is desirable that in all cases the words of the statute should be traversed, this may not be *all* that is essential. Officers and others engaged in the preparation of the affidavits are advised and enjoined to insist upon any and all additional statements which to them may seem necessary to a proper understanding of the case by the Commissioner of Internal Revenue. Certain general rules will apply in all cases; but, in addition thereto, each case may require some statement as evidence upon some point peculiar to itself.

ALLOWANCE OF CREDIT FOR TAXES ABATED.

When claims for the abatement of taxes, either as uncollectible or erroneous, are allowed in the office of the Commissioner of Internal Revenue, orders for abatement are drawn for the aggregate of so much as is abated upon each claim named in the schedule accompanying the letter of credit, which is drawn at the same time for the same amount. The letter of credit shows the number of the order, and is sent directly to the collector of internal revenue to whom the taxes are charged, and is his authority for taking credit on Form 51 B and his quarterly account for taxes abated. Orders for abatement are sent to the Auditor for the Treasury Department.

If a collector should discover from the schedule of abated taxes, which always accompanies the letter of credit, that a mistake has occurred, either in having abated a larger amount than it was designed to claim, or in abating a tax which has been previously abated, he should immediately notify the Commissioner of the fact, so that the order may be recalled, and the error be corrected by the issue of a new one in its place. In such a case no credit, *for any amount whatever*, should be taken upon Form 51 B, or upon the quarterly account, until the order of abatement has been corrected and a new letter of credit has been received.

CLAIMS FOR THE ABATEMENT OF STAMP TAXES ASSESSED.

In all cases where assessments are made of stamp taxes after the issuance of the stamps, claims for abatement should be made on Form

47 whether the taxes were assessed in column 10 or column 10½ of Form 23, as Form 467 has been abolished.

If an assessment of a stamp tax on spirits is made in column 10 of any assessment list, and the tax is afterwards paid and stamps issued, there is a duplicate charge against the collector, and a claim for release should be made on Form 488, and if a special tax should happen to be assessed in column 10 of any list, and the tax afterwards paid and a stamp issued, the claim for release should be made on Form 488. (See heading "Duplicate Charges.")

In claims for the abatement of assessments on spirits in warehouse, the affidavit on Form 47 should recite the number of the distillery warehouse, the serial numbers of the packages assessed, the taxable contents, the amount of tax paid, and date of payment. Where the tax is assessed on the original gauge, and claim is made for the abatement of the tax on leakage allowable under the provisions of law (sec. 50, act of Aug. 28, 1894, 28 Stat. L., 509, and sec. 1, act of Mar. 3, 1899, 30 Stat. L., 1349), the collector should state, in addition to the above facts, the original contents of the packages and the quantity allowed as leakage, and should state whether a request for a regauge was made by the distiller, giving date of the request and the date of the filing thereof with the collector, and whether the regauge was actually made before the withdrawal of the spirits.

When abatement is asked of stamp taxes assessed on brandy not warehoused, the serial numbers of the tax-paid stamps should be given, in addition to the information above required for the abatement of tax on spirits that have been in warehouse.

These claims should be made by the collector, or the deputy in charge, as the information upon which they are based is of record in the collector's office.

In cases where taxes have been abated as uncollectible, and are afterwards claimed and allowed as erroneous, no order of abatement is necessary. In such cases, letters are addressed to collectors notifying them of the allowance of the claim, upon the receipt of which letter a record should be made thereof opposite the entry of the case on Record 23.

FILING OF A CLAIM FOR ABATEMENT DOES NOT OPERATE AS A DELAY OF COLLECTION.

The filing of a claim for the abatement of a tax alleged to have been erroneously assessed does not operate as a suspension of the collection of the tax, or make it any less the duty of the collector to exercise due diligence to prevent the collection of the tax being jeopardized. He should, if necessary, collect the tax, and leave the taxpayer to his remedy by claim on Form 46.

PENALTY OF 5 PER CENT AND INTEREST AT THE RATE OF 1 PER CENT A MONTH.

Section 3184, Revised Statutes, requires that—

Where it is not otherwise provided the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes, within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes, with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of one per centum a month.

When an assessment is made for a tax or penalty and demand made for payment, if a claim for abatement (Form 47) is filed within ten days after such demand, and accepted by the collector, the time ceases to run against the claimant as to 5 per cent penalty until the claim is rejected. Upon receipt of the notice of rejection of the claim, the collector should immediately notify the party assessed and demand the payment of the tax; if the tax is not then paid within ten days after mailing of the notice to the claimant by the collector of the rejection of the claim, the 5 per cent penalty *accrues*. Interest at 1 per cent per month continues to run and should be collected with the tax at the time of payment for the full number of calendar months which intervene between the date of the expiration of the first ten days' notice and the date of the payment of the tax, notwithstanding the fact that a claim for abatement has been filed.

DUPLICATE CHARGES.

Taxes erroneously or illegally assessed are by the Commissioner of Internal Revenue remitted to the party and abated to the collector, while taxes uncollectible are simply abated by the Commissioner to the collector against whom they are charged; but amounts which by error or otherwise have been twice receipted for, and charged to a collector, are held by the accounting officers to be matters of account, and not subjects for abatement.

These errors are generally of the following description:

1. Sales of stamps reported on Form 58.
2. Taxes receipted for by predecessor, reported on Form 58.
3. Specific penalties deposited to credit of the Secretary of the Treasury, and which, while thus deposited, have been reported on Form 58.
4. Errors in addition of lists, or amounts not assessed that have been erroneously included in the receipt on Forms 23½ and 476.
5. Assessed special taxes covered by "special-tax stamps" issued.

6. Assessed taxes on distilled spirits covered by tax-paid stamps issued.

Claims of the first five classes above should be made on Form 488 (Auditor's Form No. 718). These claims, accompanied by proper evidence, and in cases under classes 1, 2, and 3, with a copy of Form 58 containing the errors, should be forwarded to this office for verification. Claims of the sixth class should be made on Form 66*a*.

Blank Forms 488 and 66*a* are furnished by this office.

The claim on Form 66*a* should set forth the assessment fully, giving the name of the person or firm, the page and line where assessed, the serial number and letter, date, and value of each tax-paid stamp issued, with number and denomination of the book from which said stamp was taken, the serial number of the package, and the number of taxable gallons.

When a collector returns books of stubs of special-tax stamps, or tax-paid stamps, to this office, he should *then* (and not before) file here a claim for the release (as a duplicate charge) of *all* assessments for special taxes and distilled spirits, receipted for on Form 23½ or 476 and covered by special-tax or tax-paid stamps issued from those books.

These claims, on being forwarded, should be entered in Office Record No. 22 and on line 5 in Form 79 for the quarter in which the claim is made. This is required by the Auditor for the Treasury, otherwise credit will not be given.

Credit should be taken on Form 51 B for the amount of any alleged duplicate charge at the time the claim is forwarded with the quarterly account, Form 79, without waiting for the notice of allowance by the Auditor.

EXCESS AND DEFICIENCY ASSESSMENTS.

Section 6 of the act of March 1, 1879, as amended, is as follows:

That whenever, under the provisions of section thirty-three hundred and nine of the Revised Statutes, an assessment shall have been made against a distiller for a deficiency in not producing eighty per centum of the producing capacity of his distillery as established by law, or for the tax upon the spirits that should have been produced from the grain, or fruit, or molasses found to have been used in excess of the capacity of his distillery for any month, as estimated according to law, such excessive use of grain, or fruit, or molasses having arisen from a failure on the part of the distiller to maintain the capacity required by law to enable him to use such grain, or fruit, or molasses without incurring liability to such assessment, and it shall be made to appear to the satisfaction of the Commissioner of Internal Revenue that said deficiency, or that said failure, whereby such excessive use of grain, molasses, or fruit arose, was not occasioned by any want of diligence or by any fraudulent purpose, on the part of the distiller, but

from misunderstanding as to the requirements of the law and regulations in that respect or by reason of unavoidable accidents, then, and in such case, the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury is authorized, on appeal made to him, to remit or refund such tax, or such part thereof as shall appear to him to be equitable and just in the premises. And the Commissioner of Internal Revenue upon the production to him of satisfactory proof of the actual destruction, by accidental fire or other casualty, and without any fraud, collusion, or negligence of the distiller of any spirits in process of manufacture or distillation, or before removal to the distillery warehouse, shall not assess the distiller for a deficiency in not producing eighty per centum of the producing capacity of his distillery as established by law when the deficiency is occasioned by such destruction, nor shall he, in such case, assess the tax on the spirits so destroyed: *Provided*, That no tax shall be remitted or refunded under the provisions of this section upon any assessment made prior to January first, eighteen hundred and seventy-four: *Provided further*, That no assessments shall be charged against any distiller of fruit for any failure to maintain the required capacity, unless the Commissioner shall, within six months after his receipt of each monthly report notify such distiller of such failure so to maintain the required capacity.

In case of an accident, causing an involuntary suspension, the distiller and storekeeper should follow the instructions contained on pages 54 and 55, Regulations No. 7, as nearly as possible.

In presenting claims for the abatement or refunding of deficiency assessments occasioned by unavoidable accident, the claimant should state under oath when the accident occurred, the nature and origin of the same, in what particular it affected the operations of the distillery, and whether the deficiency or failure was occasioned by any fraudulent purpose or want of diligence on the part of the distiller or his agents or employees; also, whether the storekeeper dismantled the distillery, and, if so, when; whether he sent notice of suspension to the collector or his deputy in charge of the distillery, and, if so, when; and how long the distillery remained idle on account of the accident.

The deputy collector should state when he received the notice and the date thereof; when he reached the distillery, and whether there was any delay in receiving the notice or going to the distillery after he received it. He should also state whether he found the distillery dismantled, and, if so, he should ascertain, if possible, and report the date of dismantling. He should also state whether any mash, wort, or beer was made, or spirits distilled, after the dismantling of the distillery.

The storekeeper and gauger will, if cognizant of the facts, state under oath the nature and origin or cause of the accident and the

circumstances connected with the same; what efforts were made by the distiller and his employees or agents at the time of the accident to prevent its occurrence; and what precautions were taken by the distiller, his employees or agents, prior to the accident, to guard against its occurrence; and whether the accident was in any way attributable to any want of care, caution, attention, diligence, skill, discretion, or to fraudulent purpose on the part of the distiller or any of his employees or agents.

If it is claimed that the deficiency or excess was occasioned by misunderstanding on the part of the distiller as to the requirements of the law and regulations, the affiants should testify as to what opportunity the distiller had for information on these points; they will also, in all cases, testify as to what efforts were made by the distiller and his employees and agents to maintain the capacity or to avoid the deficiency during the month in which the failure or deficiency occurred, also prior to the month in which the failure or deficiency occurred; whether, in their opinion, such deficiency in production or failure to maintain the capacity, whereby the excessive use of material occurred, was occasioned by any want of diligence or by fraudulent purpose on the part of the distiller or his agents or employees; and the collector, in forwarding the evidence to the Commissioner, will also state his opinion on these points, and as to the equity and justice of the assessment.

The storekeeper should state, under oath, when the accident occurred; when he dismantled the distillery; when the deputy collector was notified to come; when he arrived; when the distillery resumed operations, and whether any mash, wort, or beer was made or spirits distilled during the time when the distillery was alleged to be under suspension or idle.

The collector should investigate and report as to the character of the witnesses and the truth of their statements.

Where accidents occur which do not necessitate a suspension of work, but nevertheless cause loss to the distiller and deficiency in his product, the circumstances should be fully detailed under oath and verified by the several officers as in cases of actual suspension.

Relief under section 6, act of March 1, 1879, can only be granted in cases where the assessment "was not occasioned by any want of diligence, or by any fraudulent purpose on the part of the distiller, but from misunderstanding as to the requirement of the law and regulations in that respect, or by reason of unavoidable accidents."

A copy of regulations, No. 7, and of all other regulations governing the business of the distiller, should be furnished to each distiller, and the fact and date of delivery certified to the Internal-Revenue Office by the collector. After such copies of the regulations have been

furnished to the distiller, it will be presumed that he has made himself acquainted with them.

His receipt for such copies should be taken on Form No. 163, which will be furnished to collectors for this purpose. When a distiller refuses to sign such receipt, the officer making the service should state under oath, on Form 164, the fact of such refusal, and that the regulations (naming them) were delivered to and left with the distiller on the date specified. The receipt or affidavit, as the case may be, should be forwarded to the Internal-Revenue Office.

Whenever relief is sought under the provisions of section 6, act of March 1, 1879, from taxes on deficiency or on excess, on the ground of misunderstanding as to the requirements of the law and regulations, the claimant will be required to show what the circumstances were which led to the misunderstanding, and what particular provision of law or regulations was misunderstood. It must also clearly appear that the assessment resulted wholly or in part from such misunderstanding, and was not occasioned by any want of diligence or by any fraudulent purpose on the part of the distiller.

Fruit distillers should promptly register, as *not for use*, any still that is not actually used, as otherwise the capacity of such still will be charged whenever distilling is done with other stills. (See Circular No. 317, revised.)

The following definitions are published here for the guidance of revenue officers and distillers:

ACCIDENTS.

In determining what shall be considered an accident, it is held that not only will inevitable casualties or acts of Providence, or what may be called irresistible forces be considered, but such unforeseen events, misfortunes, losses, acts, or omissions, as are not the results of any negligence or misconduct on the part of the distiller or owner of distilled spirits, or their agents or employees.

If the facts relied upon resulted from the operations of nature, they must be something out of the ordinary course of things. It can not be considered an accident that the sun shines, that it rains, snows, freezes, thaws—that a river rises or falls at certain seasons of the year—that water becomes warm in the summer and cold in winter. If either of these ordinary processes of nature is adduced as a reason why a tax should be abated, it must affirmatively appear that the change was so sudden and severe that it was out of the ordinary course of events, and, therefore, could not be provided against.

When a case of accident of the above character occurs, the distiller must at once give notice to the collector or deputy collector, so that the facts can be investigated and reported upon and the immediate action of this office be had upon the question of suspending work.

UNAVOIDABLE ACCIDENTS.

In placing a construction upon the words "*unavoidable accidents*," as they relate to the operations of distilleries, it will be necessary to consider the facts and circumstances relied upon as grounds of relief in each case. The act of March 1, 1879, requires due diligence on the part of the distiller, and his agents and servants, and if the circumstances relied upon were the result of the negligence or misconduct of the distiller, or his agent or servant, he will have no claim to relief.

DILIGENCE.

Diligence is the doing of things in proper time. As the opposite of negligence, it signifies, primarily, care, caution, attention, promptitude, skill, or discretion in the performance of an act.

CONCERNING THE REMISSION OF TAX ON DISTILLED SPIRITS LOST BY CASUALTY.

ABATEMENT OR REFUNDING OF TAXES ON DISTILLED SPIRITS DESTROYED BY CASUALTY.

Section 3221, Revised Statutes, as amended by section 6 of the act of March 1, 1879, provides that—

The Secretary of the Treasury, upon the production to him of satisfactory proof of the actual destruction by accidental fire or other casualty, and without fraud, collusion, or negligence of the owner thereof, of any distilled spirits, while the same remained in the custody of any officer of internal revenue in any distillery warehouse, or bonded warehouse of the United States, and before the tax thereon has been paid, may abate the amount of internal taxes accruing thereon, and may cancel any warehouse bond or enter satisfaction thereon, in whole or in part, as the case may be. And if such taxes have been collected since the destruction of said spirits, the said Secretary shall refund the same to the owners thereof out of any moneys in the Treasury not otherwise appropriated. *And when any distilled spirits are hereafter destroyed by accidental fire or other casualty, without any fraud, collusion, or negligence of the owner thereof, after the time when the same should have been drawn off by the gauger and placed in the distillery warehouse provided by law, no tax shall be collected on such spirits so destroyed, or, if collected, it shall be refunded upon the production of satisfactory proof that the spirits were destroyed as herein specified.*

[Liability for tax on bonded spirits accrues immediately upon the destruction of the spirits. (Insurance Company *v.* Thompson *et al.*, 5 Otto, 547.)]

[Liability of obligors on warehousing bonds to pay the tax on spirits destroyed in a distillery warehouse can be relieved only in the manner prescribed by the statute. (Farrell *v.* United States, 9 Otto, 221; 25 Int. Rev. Rec., 83.)]

[The statute (sec. 3221, Rev. Stat.) contemplates that the burden of proof shall be on the applicant. (Op. of Solicitor of the Treasury, letter to the Secretary of the Treasury of October 21, 1885.)]

[For construction of law relative to loss of spirits from packages stored in bonded warehouse. (31 Int. Rev. Rec., 189.)]

[Leakage not a casualty. (40 Int. Rev. Rec., 173.)]

[The collapse of a barrel filled with whisky from the pressure of other barrels superimposed upon it is not a casualty within the meaning of the law. (40 Int. Rev. Rec., 237.)]

[Casualty means an accident, an event not to be foreseen or guarded against. Excessive and unusual summer heat is not a casualty, neither are undiscovered wormholes in whisky barrels a casualty within the meaning of this section. (Crystal Springs Distilling Company *v.* Cox, 47 Fed. Rep., 693; 37 Int. Rev. Rec., 328.) Decision affirmed (circuit court of appeals, 1892), 49 Fed. Rep., 555.]

[Proof required in cases of destruction of distilled spirits by incendiaries. (43 Int. Rev. Rec., 285.)]

[Denial of claim for refund of tax on spirits alleged to have been destroyed by an incendiary fire; insufficient evidence. (42 Int. Rev. Rec., 49.)]

[Where spirits are withdrawn from warehouse tax paid and stamped, and are afterwards destroyed by accident, the tax can not be refunded. (TREASURY DECISIONS, vol. 1, 1898, No. 18996.)]

[No provision authorizing relief when spirits are stolen from warehouse. (TREASURY DECISIONS, 1898, No. 19520.)]

Section 3222, Revised Statutes, United States, provides that—

The preceding section shall take effect in all cases of loss or destruction of distilled spirits as aforesaid which have occurred since January one, eighteen hundred and sixty-eight.

[The foregoing section does not embrace the amendment to section 3221, Revised Statutes, by section 6, act of March 1, 1879, which by its own terms relates only to spirits *thereafter destroyed.*]

Section 3223, Revised Statutes, as amended by section 3 of the act of March 1, 1879, provides—

When the owners of distilled spirits in the cases provided for by the two preceding sections may be indemnified against such tax by a valid claim of insurance, for a sum greater than the actual value of the distilled spirits before and without the tax being paid, the tax shall not be remitted to the extent of such insurance.

[The liability for tax on bonded spirits is an insurable interest. (Insurance Company *v.* Thompson *et al.*, 5 Otto, 547.)]

[An insurance policy upon whisky in bond, without reference to the Government tax, entitles the assured to include the tax in his recovery in case of loss, if the assured is liable for the tax. (Hedger *v.* Union

Insurance Company, circuit court, district of Kentucky, Fed. Rep., Vol. xvii, 498.)] [1]

(1.)

CLAIMS FOR REMISSION OF TAX ON SPIRITS DESTROYED IN DISTILLERY WAREHOUSE.

To obtain the relief afforded by the foregoing provisions of law, the owner of the spirits destroyed will file with the collector in whose district the loss occurred a sworn statement setting forth the date, origin, and nature of the destruction; the quantity of spirits lost by leakage, evaporation, or other cause prior to the casualty; the quantity actually destroyed by the casualty (specifying the number of packages, the serial number of each package, the serial number of the stamp affixed thereto, and the actual contents thereof in wine, proof, and taxable gallons); the quantity of spirits remaining after the casualty; that the destruction of the spirits was accidental, and without any fraud, collusion, or negligence on his part; that the spirits were owned by him at the time of their destruction, and that he is not in any manner indemnified against the tax by any valid claim of insurance. The claimant will also state in his application whether any indemnity against the loss of the spirits or any of the distillery property was held by him or by any other person at the time the loss occurred, and if so held, the amount thereof, and the value of the property so insured, and the amount of insurance paid.

The statement as to the insurance should be in detail, showing the amount and date of each policy, and the value of each class of spirits covered by such policies.

Certified copies of all policies covering the spirits destroyed will also be furnished where the amount thereof exceeds the value of such spirits.

In addition to the foregoing statement, the sworn statements of the gauger and storekeeper on duty at the warehouse at the date of the destruction must be filed with the collector, setting forth the quantity of spirits in the warehouse at that date and the quantity remaining after the casualty; that no unauthorized allowance or withdrawal has

[1] In view of the foregoing statute (sec. 3223, Rev. Stat., as amended) and the decisions above cited, it is held, in cases where it is not expressly stipulated in the policies of insurance that the Government tax is not included in the insurance on the spirits, that the owner of the spirits is not entitled to any allowance, under section 3221, Revised Statutes, on so much of the tax as is equal to the valid insurance in excess of the actual value of spirits, exclusive of the tax. For instance, if the market value of a gallon of spirits, exclusive of the tax, is 60 cents per gallon, and the insurance on the same is $1, the amount abatable thereon, under section 3221, is only 70 cents, the tax ($1.10 per gallon) not being remitted to the extent of the excessive insurance, which is 40 cents.

been made or permitted by them to be made in favor of the claimant or any other person; that they believe the spirits to have been actually and accidentally destroyed, without fraud, collusion, or negligence of the owner thereof.

In case the storekeeper or gauger, or both, were present at the destruction of the spirits they will, if possible, state the origin of the fire or other casualty, with the circumstances connected with the same. They will also state what efforts were made to prevent the destruction of the warehouse and contents, what efforts were made to remove the spirits to a place of safety, and whether, in their opinion, the actions of the owner of the spirits indicated a real desire to save the same from destruction.

If not present at the time of destruction they will so state, giving the date of their last visit at the warehouse, and whether, in their opinion, the alleged loss of the spirits was without fraud, collusion, or negligence of the owner.

Claimants and collectors should bear in mind that what is needed is a clear statement of the facts of a case by eyewitnesses or those having a personal knowledge of what they assert, showing just how and when the accident or loss ocurred.

When the Secretary has the facts before him he can judge whether the assertions and the opinions of affiants and officers are correct as to the matter of fraud or negligence.

Whenever a collector is advised of the destruction of any distilled spirits while stored in a distillery warehouse or bonded warehouse in his district, he will himself, or by his deputy, immediately visit the premises and make a thorough investigation as to the destruction reported. He will, if possible, obtain the sworn statements of at least three disinterested persons who witnessed the destruction or had knowledge of the circumstances connected therewith, as to the nature of the fire or other casualty, as to the efforts made to save the spirits from destruction, and as to the general character of the claimant. He will also ascertain the market value of the spirits at the time of their destruction and the amount of indemnity covered by insurance, and in case he reports no insurance he will state the source of his information.

After having made the investigation here ordered and having received the application and other evidence of loss, the collector will forward to the Commissioner of Internal Revenue all the papers in the case, together with a report of the investigation made by him, and he will state in his report the market value of the spirits at the time of their destruction, the amount of indemnity covered by insurance, and his opinion as to the general character of the claimant, the reliability of the several witnesses, and as to the propriety of allowing the claim.

Should the result of an investigation into an alleged loss indicate that fraud has been committed or attempted, the collector will forward at once a report of such investigation, without awaiting the filing of the application of the owner of the spirits; and in any case, should the owner of any distilled spirits claimed to have been destroyed neglect to file the application and other evidence of loss, as required by the foregoing regulations, within thirty days from the date of the alleged destruction, the collector will at once forward to the Commissioner a full report of the investigation required of him to be made.

In addition to the investigation here required, collectors will, on receiving notice of the alleged loss of any bonded spirits, report such spirits on their next list, Form 23, also on Forms 134*a* and 364; and they will at once notify the distiller of the proposed assessment.

Where claim for abatement of the tax so assessed is filed, as herein provided, application for delay in the collection of such tax, pending consideration of the claim, may be made as in other case of assessment. Unless, however, such delay is granted by the Commissioner of Internal Revenue, the collector will proceed to collect the tax; and, if not collectible on the assessment, he will immediately notify the Commissioner of the fact and wait instructions as to placing the warehousing bonds covering such spirits in the hands of the United States district attorney for suit.

When the claim is received by the commissioner he will cause it to be examined and compared with the files and records in his office, and having obtained such additional evidence in the case as may, in his judgment, be necessary, he will indorse thereon his opinion in regard to the validity of the claim and recommend such disposition of it as he may deem proper. He will thereupon transmit the claim, with all the papers, to the Secretary of the Treasury, who will return the same to the Commissioner of Internal Revenue, with his final decision in the case, as provided by law. And the collector will, upon notice that the claim or any part thereof has been allowed, take credit, on the proper line on his bonded account, Form 94*a*, for the amount of such allowance, forwarding as a voucher a copy of the notice authorizing the credit to be taken.

In case the claim is for the refunding of taxes paid on distilled spirits subsequent to their destruction, it will be made out on Form 46, and, in addition to the certificates required by that form, will be accompanied by the affidavits of the gauger, storekeeper, and the owner of the spirits, and report of the collector, as in the case of a claim for an allowance in the bonded account.

Applications for the rehearing and reconsideration of such rejected claims must be addressed to the Secretary of the Treasury, and must set forth under oath the nature of the additional proof which it is

proposed to present and which must be new and material, not simply cumulative, and which the applicant must allege was not known to him, or could not be obtained by him, while the claim was under consideration by the Department. If the application should be granted, notice thereof will be sent to the Commissioner of Internal Revenue, who will issue the necessary instructions for taking additional testimony in the case. No exparte affidavit will be received in the case of such reopened claims.

(2.)

CLAIMS FOR REMISSION OF TAX ON SPIRITS LOST BY CASUALTY WHILE IN RECEIVING CISTERNS.

Under the amendment to section 3221, Revised Statutes, before quoted, the Secretary of the Treasury is authorized to abate the taxes on spirits accidentally destroyed in the receiving cisterns after March 1, 1879, and after they should have been drawn off by the gauger and placed in a distillery warehouse, as provided by section 3267, Revised Statutes. This section provides that—

On the third day after the spirits are conveyed into such cisterns they shall be drawn off into casks, under the supervision of such gauger in the presence of the storekeeper, and be removed directly to the distillery warehouse; but on special application to the collector by the owner, agent, or superintendent of any distillery the spirits may be drawn off from the said cisterns, under the supervision of the gauger, at any time previous to the third day.

Where the remission of tax on spirits destroyed in receiving cisterns is claimed under section 3221, Revised Statutes, the proof of loss hereinbefore prescribed in case of destruction of spirits in distillery warehouse, so far as applicable, will be required in support of such claim, and in addition thereto the applicant will be required to show, to the satisfaction of the Secretary of the Treasury, that the spirits were destroyed "*after the time when the same should have been drawn off by the gauger and placed in the distillery warehouse provided by law*," and that the delay in drawing off such spirits and the destruction of the spirits was due to no fault of the claimant or any of his agents or employees.

REFUNDING OF TAXES AND PENALTIES.

PREPARATION OF CLAIMS FOR THE REFUNDING OF TAXES AND PENALTIES CLAIMED TO HAVE BEEN ERRONEOUSLY OR ILLEGALLY COLLECTED, OR REFUNDABLE UNDER REMEDIAL STATUTES.

FORM 46.

Claims for the refunding of assessed taxes and penalties must be made out upon Form 46. In this case, as in that of claims for abatement upon Form 47, the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath. The claim should be still further supported by an affidavit of the deputy collector of the proper division, and by the certificate of the collector.

Collectors and deputy collectors are cautioned that these certificates and affidavits should not be made in a merely perfunctory manner. Claims have been received at the office of the Commissioner of Internal Revenue wherein the statements of the claimant have been certified by the collector and deputy collector as "in all respects just and true," whereas a slight examination of the records of their own offices would have disclosed an entirely different state of facts.

This affidavit and certificate should be, respectively, in form as follows:

Deputy collector's affidavit.

I, ——— ———, deputy collector, ——— division, ——— district ———, being duly sworn according to law, depose and say, that I have *personally* investigated the statements made in the within affidavit, ———; and from the best information I can obtain, after careful inquiry, I believe such statements to be in all respects just and true

———.

This claim was received by me ———.

Sworn to and subscribed before me, this —— day of ———, A. D. 19—.

———.

But if the deputy collector has reason to doubt the correctness of the statements made by a claimant, he should modify his affidavit accordingly, a space being left for that purpose at the close of the

affidavit. If he has not investigated all the facts, he should state in the blank space left in the body of the affidavit for that purpose what facts he has not investigated.

Collector's certificate.

I hereby certify that I have carefully investigated the matters set forth in the within affidavit of ——— ———, and am satisfied that the statements made by ——— are in all respects just and true, except ———.

I further certify that I find, upon personal examination of the lists now on file in my office, assessments as follows:

Name.	Article.	List.	Page.	Line.	Amount.	Paid to—	Date of payment.
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....

Of the above amounts, $——— and $——— are included in the aggregate receipts for the lists, amounting to $——— and $———, respectively.

I further certify that this claim was received by me ———, 19—, and that no claim for the refunding of any of the above assessments has heretofore been presented, and that no portion of the amount claimed was paid on a compromise or abated as uncollectible or erroneous.

——— ———,
Collector.

Dated ———, 19—.

—— *District*, ———

In case the claim is for the refunding of an amount paid for stamps, or is based upon the fact that special-tax stamps or other stamps have been issued on account of the liability, the collector should certify to the purchase of the stamps as per one of the following certificates:

Collector's certificate as to purchase of stamps.

(Other than special tax.)

I hereby certify that it appears from the records of my office that the stamp— referred to in the within claim w—— purchased as follows:

Date of purchase.	By whom purchased.	Kind of stamps.	Denomination.	Number.	Amount paid.
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

Special-tax stamps.

(In connection with which penalties have been assessed.)

Date of issue.	Kind of stamp.	Serial numbers.	To whom issued.	For period commencing—	Place of business: Locality, street, and number.	Amount paid.
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....

Dated ———, ———, 19—. ——— ———, *Collector.*
—— *District*, ———

A claim for refunding should be made in the name of the party assessed, if living; if he is dead, there should be evidence of his death, and the claim should be made in the name of the executor or administrator. Certified copies of the letters of administration or letters testamentary, or other similar evidence, should be annexed to the claim to show that the claimant is administrator, etc.

The affidavit may be made by an agent of the party assessed; but, in such a case, there should be evidence of the agency, and of the sources of the agent's knowledge concerning the case in question.

PAYMENT OF CLAIMS ALLOWED.

Warrants in payment of claims allowed will be drawn in the names of the parties entitled to the money, and shall, unless otherwise directed, be sent by the Treasurer of the United States directly to the proper parties or their duly authorized attorneys or agents. But if the claimants are indebted to the United States for taxes, they must be paid before the warrants are delivered.

Attention is called to the following act, approved March 3, 1875 (18 Stat. L., 481), concerning—

DEDUCTIONS OF AMOUNTS DUE BY CLAIMANTS, ETC.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when any final judgment recovered against the United States or other claim duly allowed by legal authority, shall be presented to the Secretary of the Treasury for payment, and the plaintiff or claimant therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Secretary to withhold payment of an amount of such judgment or claim equal to the debt thus due to the United States; and if such plaintiff or claimant assents to such set-off, and discharges his judgment or an amount thereof equal to said debt or claim, the Secretary shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff or claimant denies his indebtedness to the United

States, or refuses to consent to the set-off, then the Secretary shall withhold payment of such further amount of such judgment, or claim, as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Secretary to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Secretary, with six per cent. interest thereon, for the time it has been withheld from the plaintiff.

STATUTES OF LIMITATION.

SECTION 3228 [Rev. Stat., U. S.]. All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: *Provided*, That claims which accrued prior to June six, eighteen hundred and seventy-two, may be presented to the Commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date.

No claim or application hereafter filed for the refunding of taxes under section 3220 of the Revised Statutes, or section 6, act of March 1, 1879, as amended, will be entitled to consideration unless the same shall be filed within two years from the date of the payment of the tax.

Claims for taxes recovered by judgment should be presented within two years after the date of the judgment.

The lodging of an appeal (claim for refunding) made out in due form with the proper collector of internal revenue for the purpose of transmission to the Commissioner of Internal Revenue in the usual course of business under the requirements of the regulations of the Secretary of the Treasury, is in legal effect a presentation of the appeal to the Commissioner. (14 Otto, 728; 28 Int. Rev. Rec., 87.)

All claims for the refunding of taxes, or for the redemption of stamps presented to the collector for transmission to this office should be received and forwarded, notwithstanding the fact that in the opinion of the collector they may be barred by the statute of limitation. It frequently happens that while the formal application is not presented within two years, the taxpayer has applied by letter to the Commissioner of Internal Revenue for relief, and in no case should the collector refuse to forward a claim for the reason that it was not presented to him within two years after payment.

Claims for the abatement and refunding of taxes and redemption of stamps, when received at this office, are recorded, and if they are afterwards returned to the collector for amendment they should in all cases be returned to this office; even if new claims are prepared, such new claims should be considered as amendments to the original claims and should be inclosed therein. If for any reason the claims are returned to the claimants, claimants should be instructed to return the original claims.

In all claims for the refunding of assessed taxes, the receipts on Form No. 1, given to the taxpayer at the time of the payment, should accompany the claims, or their absence satisfactorily accounted for. In cases where the claim is for only a portion of the amount covered by the receipt and the claimant desires to retain the receipt, the fact that a claim for refunding has been filed, with the amount of such claim and its date, should be indorsed on the receipt by the collector or deputy collector, and the collector's certificate on Form 46, or the affidavit of the deputy collector, should show that such an indorsement has been made on the receipt.

The collector should keep a perfect record, in the book furnished for the purpose, of all claims presented to the Commissioner, and must certify as to each claim whether it has been before presented or not.

If any claim on Form 38, 46, or 47 is presented without the affidavit of the deputy collector, the reason for the omission must be given.

If in any case, after a full investigation, the collector can not certify to the facts set forth in the affidavits, he should state the reason for his dissent, and allow the party to corroborate his statements by such other proof as he may be able to furnish.

When a claim for the abatement or refunding of a special tax is made on account of a duplicate assessment, it should appear that the party assessed had but one place of business, and that both assessments were made for the same person, time, place, and business.

All amendments in the statement of facts in claims must be made under oath.

All copies should be certified to be true ones.

Care should be taken to certify, in every instance, where a previous claim has been presented in the same case, the date of the previous claim.

When an affidavit is made upon Form 47 by some other party than the one against whom the tax was assessed, the name of the party assessed should appear upon the outside of that form.

When a firm is the claimant, the claim should be in the name of the firm; but a member of the firm or authorized agent or attorney should swear to the facts set forth, including that of membership

or agency, and should subscribe his individual name. The artificial person, to wit, the firm, can not make oath.

In claims for abatement or refunding the collector will, in all cases, insert in his certificate the *full amount of the assessment, and not simply the amount claimed.*

When the collector has twice collected the tax upon the same assessment, he will charge himself with the duplicate payment on Form 58; and when a claim is made, he will state in his certificate upon Form 46 that he has so charged himself with said amount, stating the month where charged.

When a claim for refunding is made on the ground of a duplicate assessment and payment, the collector will certify to the duplicate assessment and payment on Form 46, giving the full amount both of the assessment and of the payment, and will also give the page, list, and line, in each case.

After a claim for abatement has passed the preliminary examination, and has been marked "approved" by the person making that examination, it is often found necessary to return the affidavits for further evidence. Collectors are not to treat such claims as *allowed* and take credit for them. They should comply with the instructions which accompany the affidavits. *No credit for abatements should be taken except upon letters of credit from the Commissioner of Internal Revenue.*

Many of the rules for the preparation of claims upon Form 47 are equally applicable to the preparation of those upon Form 46. They should be followed wherever they are not manifestly inapplicable.

Relative to the taking of additional testimony in support of claims for the abatement or refunding of taxes, the attention of revenue officers and claimants is called to the requirements of Circular No. 174, dated October 30, 1877:

CIRCULAR No. 174.

In all claims for abatement, refunding, drawback, or reward for information, all applications for compromise, all contested questions as to claims of the Government for taxes not assessed, and generally in all matters wherein additional testimony is required to be taken, no *ex parte* affidavit or deposition will be considered unless the same shall have been taken after due notice to the Commissioner as herein prescribed.

Such notice must state the time and place at which, and the officer before whom, the testimony will be taken; the name, age, residence, and business of the proposed witness, with the questions to be propounded to the witness, or a brief statement of the substance of the testimony he is expected to give.

The notice shall be delivered or mailed to the Commissioner a sufficient number of days previous to the day fixed for taking the testimony, to allow him, after its receipt, at least five days, exclusive of

the period required for mail communication with the place at which the testimony is to be taken, in which to give, should he so desire, instructions as to the cross-examination of the proposed witness.

Whenever practicable, the affidavit or deposition should be taken before a collector or deputy collector of internal revenue, in which case reasonable notice should be given to the collector or deputy collector of the time fixed for taking the deposition or affidavit.

It will be observed that these regulations relate to affidavits and depositions *additional* to those presented with the claim or matter in question, as now provided for under existing regulations.

The foregoing regulations are not intended to preclude the examination of witnesses before the Commissioner; and he also reserves to himself the right to receive and consider affidavits as to which previous notice has not been given, where the reason for failure to give such notice shall appear to him to be sufficient, and also in other cases in which, from their exceptional character, or the character of the affidavit, he shall be satisfied that the rule should not be enforced.

These regulations shall apply to all matters of the character first above mentioned, pending in this office on and after the 1st day of December next [1877].

It frequently happens that a party is reported as liable to a special tax and an assessment is made. Afterwards, when the special tax is paid, it is reported by the collector and a new assessment is made and credit for payment given upon the last assessment and then a claim made for the abatement of the first assessment. Attention is called to the fact that the first assessment, if legally made, can not be abated. The payment should be credited to the first assessment and a claim made for the abatement of the second assessment as a duplicate assessment.

CLAIMS FOR SUMS RECOVERED BY SUIT.

Claims for sums of money recovered by suit for any of the causes, and against any of the officers, enumerated in section 3220, Revised Statutes, should be made upon Form 46. The claimant should state the grounds of his claim under oath, giving the names of all the parties to the suit, the cause of action, date of its commencement, the date of the judgment, court in which it was recovered, and its amount. To this affidavit there should be annexed a duly certified copy of the record of the court in the case, copy of the final judgment, certificate of probable cause, and itemized bill of costs paid receipted by the clerk or other proper officer of the court.

Section 989 of the Revised Statutes is as follows:

When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him, and by him paid into the Treasury, in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector

or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector or other officer; but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury.

In view of the foregoing provisions protecting the collector from personal liability in case the court certifies that there was probable cause for the act done by him, it will be observed that it is for the interest of the collector to see that in all cases where judgment is rendered against him the court shall be asked to give the certificate of probable cause.

If the judgment debtor shall have already paid the amount recovered against him, the claim should be made in his name, and the affidavit should state the exact amount paid by him. There should also be a certificate of the clerk of the court in which the judgment was recovered (or other satisfactory evidence), showing that the judgment has been satisfied, and specifying the exact sum paid in its satisfaction, with a detail of all items of cost paid, or for which the judgment debtor is liable.

RULES AND REGULATIONS FOR THE REFUNDING OF TAXES PAID UPON ARTICLES SHIPPED TO THE PHILIPPINE ISLANDS SINCE NOVEMBER 15, 1901.

The second paragraph of section 6 of the act of March 8, 1902, entitled "An Act temporarily to provide revenue for the Philippine Islands, and for other purposes," provides as follows:

That all articles subject under the laws of the United States to internal-revenue tax, or on which the internal-revenue tax has been paid, and which may under existing laws and regulations be exported to a foreign country without the payment of such tax, or with benefit of drawback, as the case may be, may also be shipped to the Philippine Islands with like privilege, under such regulations and the filing of such bonds, bills of lading, and other security as the Commissioner of InternalRevenue may, with the apporval of the Secretary of the Treasury, prescribe. And all taxes paid upon such articles shipped to the Philippine Islands since November fifteenth, nineteen hundred and one, under the decision of the Secretary of the Treasury of that date, shall be refunded to the parties who have paid the same, under such rules and regulations as the Secretary of the Treasury may prescribe, and a sum sufficient to make such payment is hereby appropriated, out of any money in the Treasury not otherwise appropriated.

Claims shall be prepared upon a form issued by the Commissioner of Internal Revenue for the refunding of taxes, known as Form 46, and shall be made under oath. The character of the goods shipped, the date of shipment, the amount of tax paid thereon, the name of the vessel and the name of the port to which shipped, should be stated in the body of the claim. The claims should be supported, where possible, by clearance certificates and by an affidavit of the consignee,

showing that the goods were actually received at a port of the Philippine Islands. Where neither the clearance certificates nor the affidavit of the consignee can be obtained, it will be necessary for the claimant to obtain the affidavit of the master of the vessel upon which the goods were shipped showing what disposition was made of the goods.

The claims should be filed with the collectors of the districts in which the claimants reside or with the deputy collector of the division of such district in which claimant resides. The deputy collector should investigate the facts and furnish a certificate under oath. The collector will also make such investigation as will enable him to certify to the truth of claimant's statement, the validity of the claim, the amount of tax paid, and the date of payment. After the collector has certified to the claims he will forward them to the Commissioner of Internal Revenue, who will cause them to be examined and disposed of in the manner that claims for the refunding of taxes under section 3220, Revised Statutes, are now disposed of. (Dept. Cir. No. 77, Int. Rev. No. 626.)

RULES AND REGULATIONS FOR THE REFUNDING OF TAXES PAID BY CORPORATIONS, ASSOCIATIONS, SOCIETES, OR INDIVIDUALS AS TRUSTEES OR EXECUTORS UPON BEQUESTS OR LEGACIES FOR USES OF A RELIGIOUS, LITERARY, CHARITABLE, OR EDUCATIONAL CHARACTER, ETC.

The first section of the act of June 27, 1902, entitled "An Act to provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or educational character, for the encouragement of art, and so forth," provides—

That the Secretary of the Treasury, under appropriate rules and regulations to be prescribed by him, be, and he is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the corporations, associations, societies, or individuals as trustees or executors, such sums of money as have been paid by them as taxes upon bequests or legacies for uses of a religious, literary, charitable, or educational character, or for the encouragement of art, or legacies or bequests to societies for the prevention of cruelty to children, under the provisions of section twenty-nine of the Act entitled "An Act to provide ways and means to meet war expenditures, and for other purposes," approved June thirteenth, eighteen hundred and ninety-eight.

The claims shall be made upon the usual refunding blank (Form 46) issued by the Internal-Revenue Office and to be obtained from collectors of internal revenue.

In cases where estates have not been closed, the claims should be made by the executors or administrators.

Where estates have been closed and the administrators or executors discharged, the claim should be made by an officer of the corporation,

association, or society upon whose legacy or legacies the tax was paid, provided that the tax was actualy deducted from the legacy or that the legacy was decreased by the payment of the tax.

If in any case where the estate has been closed the tax was paid from the corpus of the estate and the separate legacies were not reduced on account of the taxation, the claim should be made by the residuary legatees or parties who actually bore the burden of taxation.

In all cases the claim should be made under oath before an internal-revenue officer, or an officer with a seal, and must be accompanied by satisfactory evidence as to the charcter of the corporation, association, or society, and evidence as to whether the tax was paid from the corpus of the estate or from the individual legacies.

The claims should be filed with the collectors of the districts in which the taxes were paid, or with the deputy collector of the division of such district in which the claimant resides.

The deputy colelctor will investigate the facts and furnish a certificate under oath, and the collector will also make such investigation as will enable him to certify to the truth of the claimant's statement, the validity of the claim, the amount of tax paid, and the date of payment.

After the collector has certified to the claims, he will forward them to the Commissioner of Internal Revenue, who will cause them to be examined, and in all cases where he is satisfied that the amount claimed or any portion thereof was paid by the claimant as taxes on legacies for the uses of a religious, literary, charitable, or educational character, or for the encouragement of art, or legacies or bequests to societies for the prevention of cruelty to children, he will make the proper allowance thereon, first submitting cases where the amount involved exceeds $250 to the Secretary of the Treasury for his consideration and advisement. After the allowance by the Commissioner of Internal Revenue the claim will be submitted to the Auditor for the Treasury Department for adjustment.

The Auditor will adjust the claims as claims for the refunding of taxes erroneously collected are now adjusted.

RULES ANE REGULATIONS FOR THE REFUNDING OF AMOUNTS PAID FOR DOCUMENTARY STAMPS USED ON EXPORT BILLS OF LADING.

The second section of the act of June 27, 1902, entitled "An Act to provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or education character, for the encouragement of art, and so forth, under the Act of June thirteenth, eighteen hundred and ninety-eight, and for other purposes," provides—

That the Secretary of the Treasury, under rules and regulations to be prescribed by him, be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated,

sums paid for documentary stamps used on export bills of lading, such stamps representing taxes which were illegally assessed and collected.

Claims shall be made upon the usual refunding blank (Form 46) issued by the Internal Revenue Office, and to be obtained from collectors of internal revenue.

In cases where attorneys desire to prepare a form better adapted to this particular class of cases, such forms will be received, provided that they conform in size to the rules of the Department—that is, so as to fold 3½ by 8½ inches, and have blanks for the deputy collector's affidavit and the collector's certificate.

Where possible the original bills of lading, with stamps affixed, should accompany the claim. If this can not be done, satisfactory evidence should be furnished showing why the stamps can not be returned to this office, and the duplicate bills of lading should be submitted to the deputy collector who verifies the claim.

When neither original nor duplicate bills of lading have been retained, the deputy collector verifying the claim should have access to the records of claimant so as to satisfy himself as to the number of bills of lading to which a 10-cent stamp was affixed.

It will be necessary for the claimant to show who paid for the stamps, and whether the full face value was paid.

If stamps were purchased from the collector and it is claimed that full face value was paid for them, the collector should certify that no discount was allowed on the purchase.

Where the original stamped bills of lading can not be filed, a schedule of bills of lading issued for goods exported must be filed with the claim, showing the date and kind of goods, the port from which and to which the shipments were made, the consignor and consignee, and the means of transportation employed, giving the name of the ship, etc., and the schedule must be clearly identified as the schedule referred to in the deputy collector's certificate.

Claims so prepared should be presented to the collector of the district in which the claimant resides, or, in cases where a transportation company is the claimant, to the collector of the district in which the office of the agent who used the stamps is situated. The deputy collector must certify under oath that he has compared the schedule with the duplicate bills of lading or the books in the office of the claimant, and that it is a correct statement of the bills of lading covered by the claim. If in any case the claim is made in the name of any person or corporation other than the one who purchased and affixed the stamps, such claim must be accompanied by a waiver from the person who, or corporation which, purchased and affixed the stamps of any rights he or it may have to a refund on account of the stamps used.

The collector will make the usual certificate required of collectors in claims for the refunding of amounts paid for documentary stamps, and forward the claims to the Commissioner of Internal Revenue, who will have them examined and disposed of as claims arising under the act of May 12, 1900, are now disposed of.

REFUNDING TAX ON CONTINGENT BENEFICIAL INTEREST UNDER SECTION 3, ACT OF JUNE 27, 1902.

Section 3 of the act of Congress approved June 27, 1902, entitled "An Act to provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or educational character, for the encouragement of art, and so forth, under the act of June thirteenth, eighteen hundred and ninety-eight, and for other purposes," provides—

That in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the Act approved June thirteenth, eighteen hundred and ninety-eight, entitled "An Act to provide ways and means to meet war expenditures, and for other purposes," and amendments thereof, the Secretary of the Treasury be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July first, nineteen hundred and two. And no tax shall hereafter be assessed or imposed under said Act approved June thirteenth, eighteen hundred and ninety-eight, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two.

Claims for refunding of taxes which have been collected on contingent beneficial interests, which did not become vested prior to July 1, 1902, shall be made on Form 46 and filed with the collector of internal revenue who will receive all claims presented and forward same to the office of the Commissioner of Internal Revenue for consideration. Such claims will be considered and disposed of as claims for refunding under section 3220, Revised Statutes, are now disposed of. See Department Circular No. 86 (Int. Rev. No. 630) as modified by the opinion of the Attorney-General of August 1, 1902. (T. D. 570 and 595.)

REDEMPTION OF OR ALLOWANCE FOR INTERNAL-REVENUE STAMPS.

The act entitled "An Act authorizing the Commissioner of Internal Revenue to redeem or make allowance for internal-revenue stamps," approved May 12, 1900, as amended by the act of June 30, 1902, provides—

That the Commissioner of Internal-Revenue, subject to regulations prescribed by the Secretary of the Treasury, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal-revenue tax, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected. Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Commissioner of Internal Revenue, or until satisfactory proof has been made showing the reason why the same can not be returned; or, if so required by the said Commissioner, when the person presenting the same can not satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

Provided, That documentary and proprietary stamps issued under the provisions of "An act to provide ways and means for war expenditures, and for other purposes," approved June thirteenth, eighteen hundred and ninety-eight, may be redeemed only when presented in quantities of two dollars or more, face value:

Provided further, That no claim for the redemption of or allowance for stamps shall be allowed unless presented within two years after the purchase of said stamps from the Government, *excepting documentary and proprietary stamps issued under the Act of June thir-*

teenth, eighteen hundred and ninety-eight, which stamps may be redeemed as hereinbefore authorized, upon presentation prior to the first day of July, nineteen hundred and four.

SEC. 2. That the finding of facts in and the decision of the Commissioner of Internal Revenue upon the merits of any claim presented under or authorized by this Act shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer.

SEC. 3. That all laws and parts of laws in conflict with any of the provisions of this act are hereby repealed.

CLAIMS FOR UNUSED STAMPS TO BE MADE ON FORM 38.

Claims for the allowance for or redemption of unused stamps must be made on Form 38 revised, and the facts relied upon in support of the claim should be clearly set forth under oath. The claim should be made by the bona fide owner of the stamps presented for allowance or redemption or an agent or representative of such owner.

The claim should be supported by the certificate of the deputy collector who personally investigated the statements made by the claimant, setting forth, after careful inquiry, his belief as to the statements therein made, and by the certificate of the collector from whom the stamps were purchased, setting forth the date of purchase, by whom purchased, kind of stamps, denomination, number and amount, and his certificate that the facts set forth in the affidavit of the claimant have been carefully investigated under his direction, and his opinion as to the truth or falsity of said statements, together with such recommendation as to the allowance or disallowance of said claim as in his opinion seems just and proper.

All claims on Form 38 revised shall be forwarded to the Commissioner of Internal Revenue for examination, and he may, when he deems it necessary to complete the evidence of the facts set forth in any claim, require additional statements, certificates, or affidavits from the claimant, collector, or any other person, and may cause such investigation to be made and such instructions complied with as in his opinion are necessary to a proper adjustment of the claim.

CLAIMS ON FORM 46.

In cases where documentary or proprietary stamps have been affixed to instruments or articles not requiring them, and canceled, or where, by error, stamps of greater value than that required by law have been used, claims for the amounts paid in error or in excess should be made on Form 46 accompanied by the stamps, and, where practicable, by the instruments to which the stamps have been erroneously attached, or certified copies thereof.

These instructions as to the use of Form 46 will also apply to cases where an instrument is duly stamped and is accidentally injured or found to be defective, and a substitute is prepared and duly stamped, or where the instrument is not used.

In cases where penalties have been assessed or collected in connection with a special tax, and a claim is made for the refunding of the amount paid for the special-tax stamp, such claim should be made on Form 46 and should include the penalty paid.

All other claims for the redemption of stamps, including special-tax stamps, should be made on Form 38 revised.

PREPARATION OF CLAIMS FOR THE ALLOWANCE FOR OR REDEMPTION OF STAMPS.

1. All blank spaces provided in the claim, on page 1, of Form 38, revised, and in the deputy collector's certificate and collector's certificates, on page 2, must be properly filled. The collector's certificate and recommendation, and certificate as to purchase of stamps, on page 2, must be signed by the collector, acting collector, or deputy collector in charge.

2. Certificates of purchase of stamps should include all stamps referred to in the claim; also payments of all special taxes upon kinds of business mentioned liable thereto, and when paid in duplicate.

3. Affidavits must be properly attested by some one having authority therefor. Any person other than an internal-revenue officer administering an oath or affirmation must show by seal or certificate, from the proper authority, that he is qualified to do so. Affidavits may be made before any internal-revenue officer authorized to administer oaths, without fee. An officer in signing a jurat should give the title of his office.

4. Claims should be made by *the actual bona fide owner of the stamp* presented for redemption, if living; if he is dead, the claim should be made in the name of the executor or administrator. Certified copies of the letters of administration or letters testamentary, or other similar evidence, should be annexed to the claim to show that the claimant is administrator, etc.

When a firm is the claimant, the claim should be in the name of the firm, properly executed by one of its members, or a duly authorized agent. If made by an agent, there should be evidence of the agency and of the source of the agent's knowledge concerning the case in question.

Stamps should, in all cases, be forwarded with the claims. If they can not be forwarded, the reasons therefor should be stated in the affidavit.

5. In claims arising on account of special-tax stamps it is not sufficient to state that the claimants have done no business for which they would be liable to special tax. Affidavits should be furnished containing specific denial as to each and all of the acts involving liability to special tax, as found in the statute imposing the tax—for instance, in the case of a retail liquor dealer: That from ——— to ——— he neither "sold nor offered for sale any foreign or domestic distilled spirits, wines, or malt liquors in less quantities than 5 wine gallons at the same time," ——— ———.

6. In cases where two special-tax stamps of the same kind have been issued for the same period and place to the same person or firm, an affidavit as above should be furnished, adding thereto the words, "*except in one place* (or more, as the case may be), *for which he ha paid the special tax required by law.*"

7. Where, in case of dissolution of a firm which had paid special tax, the remaining partner or partners have been required to pay new special tax for the unexpired portion of the time for which tax was paid by the original firm, and claim the refunding of the tax paid, it should be established that from ——— to ———, the date of the dissolution of the firm, the successor carried on the same business as the original firm, and that during such period no person, not a member of the original firm, was taken into partnership.

8. If the period for which the stamp was issued has expired, the affidavit furnished under instructions Nos. 5 and 6 should cover the whole period. If the period has not expired, the affidavit should cover the period from the first day of the first month for which the stamp was issued to the time of making the affidavit.

9. Where a brewer or rectifier has purchased a special-tax stamp for 500 barrels or more, and has manufactured or rectified less than 500 barrels and claims the refunding of the excess of special tax paid, the collector should furnish his certificate of the monthly production of fermented liquors, or rectification of distilled spirits, by the claimant during the period covered by the stamp.

10. Where a brewer or rectifier has purchased a special-tax stamp as brewer or rectifier less, and afterwards finds that his business has exceeded 500 barrels, he should purchase a special-tax stamp as brewer or rectifier and present the special-tax stamp as brewer or rectifier less to this office for redemption with a claim on Form 38, revised.

11. Stamps issued denoting the payment of taxes on fermented liquors, tobacco, snuff, and cigars, held by parties who have discontinued business and have no further use for the stamps may be pre-

sented for redemption at any time within two years after their purchase from the Government.

12. In cases of duplicate purchases of tax-paid stamps for packages of distilled spirits the claim should be made on Form 38, and the certificate of the collector as to purchase of stamps should specify, as to each purchase, the serial numbers of the packages for which the stamps were issued, and the collector should certify that, as appears from the records of his office, the claimant is not indebted to the United States on account of unpaid assessments or otherwise, if such is the fact.

13. With each claim for the refunding of money paid for tax-paid spirit stamps purchased to replace lost stamps (which claims should be made on Form 46), there should be filed a statement showing the serial numbers of the lost stamps, and the serial numbers of the stamps which replace them, the serial numbers of the packages for which the lost stamps were purchased, and the fact that the new stamps were attached to said packages, and the date of purchase of each lot of stamps. Evidence should also be filed showing in whose possession the lost stamps were at the time of the loss, the manner of loss and circumstances connected therewith, and the efforts made to recover the stamps. A bond should also be filed with each claim, in double the amount claimed, with two or more sureties approved by the collector, indemnifying the United States against loss in case the missing stamps should be used. A form of bond for such cases has been prepared, and will be furnished to collectors on application.

CERTIFICATION OF ALLOWANCE BY THE COMMISSIONER.

Claims for the redemption of or allowance for stamps allowed by the Commissioner of Internal Revenue on Form 38 or 46 shall be certified by him to the Auditor for the Treasury Department, who shall, in the absence of fraud, or mistake in mathematical calculation of the amount due claimant on the basis of the allowance by the Commissioner, certify the amount allowed to the Division of Bookkeeping and Warrants. The allowance of the Commissioner, as set forth in his certificate, is, in the absence of fraud or mistake as aforesaid, conclusive as to the facts authorizing the allowance, the legality of the claim, and the amount due the claimant. When mistake in mathematical calculation on the basis of the allowance of the Commissioner appears in any claim certified as aforesaid, the Auditor shall return said claim to the Commissioner, who shall correct said mistake, and again certify the claim as corrected to the Auditor. If fraud in any claim so certified is discovered by the Auditor he shall transmit said claim, together with a statement of the facts which, in his opinion, constitute the fraud, to the Secretary of the Treasury. The Secretary

will, whenever in his judgment the interests of the Government require it, suspend payment, and direct the reexamination of any claim for the redemption of internal-revenue stamps, or the reexamination of any facts connected therewith.

The Commissioner of Internal Revenue, when he deems it necessary to the determination of the legal rights of the claimant, or to the proper adjustment of any claim, shall refer the claim to the Secretary of the Treasury, who may apply for a decision to the Comptroller of the Treasury, who shall render his decision upon any question of law involved in said claim affecting the payment to be made to the claimant.

I hereby approve and prescribe the foregoing Regulations.

FRANKLIN MACVEAGH,
Secretary of the Treasury.

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